



OBSERVATIONS

ON THE GENERAL

HIGHWAY AND TURNPIKE

A C T S, &c.



1840

STATION

WIDWAY

1840

1840

1840

1840

1840

1840

19010 $\frac{60}{2}$

OBSERVATIONS

ON THE GENERAL

HIGHWAY AND TURNPIKE

A C T S

PASSED IN THE

SEVENTH YEAR OF HIS PRESENT MAJESTY:

AND ALSO UPON THE

REPORT OF THE COMMITTEE OF THE
HOUSE OF COMMONS,

WHO WERE APPOINTED

UPON THE TWENTY-EIGHTH OF APRIL, 1772,

TO CONSIDER OF THE ABOVE ACTS.

L O N D O N:

Printed for JOSEPH JOHNSON, No. 72, St. Paul's Church-Yard.

MDCCLXXIII.

OPPERKAMP

HILLY & CO

4 24 0 8

SAVED THE WORLD

REPORT OF THE COMMISSIONERS

OF THE PATENT OFFICE





Thomas Gilbert, Esq.

Member of Parliament for
the City of *Litchfield*, &c.

S I R,

THE very uncommon
pains and attention
you have bestowed on im-
proving and digesting the
highway and turnpike laws,
intitle

intitle you to the warmest thanks of the public. It is therefore with the greatest propriety that the following Observations are inscribed to you. Many of them I have already transmitted to you by letter; and whilst I thank you for the very favourable and candid attention with which you have honoured my *private* correspondence on this subject, I am happy, under the sanction of your name, to offer this work to
the

DEDICATION. vii

the public, and in this manner to assure you that I am, with the greatest respect and gratitude,

SIR,

Your most obliged

and devoted Servant,

HOPE, Thomas Butterworth Bayley.
near Manchester,
13th Nov. 1772.

DEDICATION

The people and nation
are to have for their
benefit and

the people and nation
are to have for their
benefit and

the people and nation
are to have for their
benefit and

the people and nation
are to have for their
benefit and

the people and nation
are to have for their
benefit and

the people and nation
are to have for their
benefit and

the people and nation
are to have for their
benefit and



ADVERTISEMENT.

THE following observations are the result of experience, and are now made public from a sincere desire to contribute something to the perfecting the general highway and turnpike acts, which will probably undergo several alterations and amendments the ensuing sessions of parliament.

No abstracts either from the acts or the report of the committee are printed with these observations, as they would swell the pamphlet to an unreasonable size. Indeed it is

B

to

ii ADVERTISEMENT.

to be presumed that all those who are inclined to give that attention to this subject which its great importance deserves, are already possessed of both the acts and the report. Such parts of the highway and turnpike laws, and the regulations proposed in the report of the committee, as are *not* mentioned in the following pages, the author greatly approves of; and only takes notice of those parts which he thinks should be altered.

HE hopes for the candour of the public in judging of this performance, and that the end he has in view will apologize for its inaccuracies and defects.

OBSER-



OBSERVATIONS
ON THE GENERAL
HIGHWAY AND TURNPIKE
A C T S, &c.

THE uniting of two, three or more parishes or townships into one district, as proposed by the committee,* and the appointing of *one* surveyor for every such district, with a fixed salary,

* See the Report, Resolutions 1, 2, 3, 4.

2 OBSERVATIONS, &c.

salary, is a very great improvement on the present mode of appointing surveyors. For the inhabitants at present generally serve the office by rotation, and without inclination or perhaps ability to be active in the discharge of their duty, are only solicitous how to get over the year of their surveyorship, with the least possible trouble and loss of time.

As it is proper to guard as much as can be against every circumstance that may obstruct the execution of these laws, I could wish that some rate was *fixed*, to direct the justices in proportioning the sums to be paid by each township,

OBSERVATIONS, &c. 3

ship, &c. towards the salary of the surveyor for the district. This might be done without much difficulty, and would prevent any possibility of dispute, and the necessity of allowing appeals to the quarter sessions against the quantum to be paid by any particular parish, &c. I think inconveniences may arise from permitting the justices to except any particular township, &c. out of *a district* only because one or more persons in that township are to be found capable and willing to serve *without salary* the office of surveyor. Exceptions to *general regulations* should be as few as possible, and never permitted without very strong cause.

4 OBSERVATIONS, &c.

THE powers intended to be given to the justices of the peace, by the four first resolutions of the committee, are very great : they are to have the sole appointment of the districts, and of the surveyors : they are to fix his salary and the bond of security he is to give to each township in his district. It must be acknowledged that much is to be left to the discretion of these magistrates ; but the powers must be vested in some persons, or the laws could not be enforced. An act of parliament cannot provide so minutely for every contingency as to leave nothing to be supplied by the knowledge or prudence of those who are to put it into execution. AND

AND certainly those gentlemen who have the honour to be commissioned by his Majesty to serve the capacity of magistrates, it is to be *presumed* are men of the most considerable property, worth, and knowledge in their respective counties. But here I cannot omit to observe, as a matter of very serious concern, that whilst from the unavoidable circumstances of the times our statute laws are multiplied to an astonishing degree, there is not a proportionate attention to their execution. How few, amongst the *great number* of noblemen and gentlemen of knowledge, fortune and independence, who are in the commission of the

6 OBSERVATIONS, &c.

peace in every county of this kingdom, have patriotism or activity sufficient to induce them to act under it?

THE office of a justice of the peace every day becomes more arduous and burdensome. It is not *generally* esteemed very honourable; it certainly brings no profit, and is frequently attended with very considerable expence.

SUCH, therefore, who only consult their own *immediate* ease, emolument or pleasure, avoid this troublesome office, and leave it to be borne by those who may not always be properly qualified for it.

Let

Let these sons of ease and pleasure however consider, that it is not for *them* either to blame or ridicule those, who do undertake the business of their country, however faulty or ignorant they may be ; much less to cast the odium of their injudicious administration of the laws upon an *office* of great antiquity, respect and use.

FROM the great decline of public spirit which is observable amongst us, it may be no improbable conjecture to suppose that it will very soon become necessary to appoint magistrates with salaries in every county in England ; and from the prevailing want of a disinterested

8 OBSERVATIONS, &c.

interested love of our country, and a serious regard to the order of a well regulated police and a due execution of the laws, amongst the *first* ranks of people, even our *magistrates* may become the pensioned instruments of oppression.

BUT, to return from this long digression, I would observe that by the present highway act* no tree, &c. is allowed to stand *in* any highway within fifteen feet from the centre of it. But yet, except the road is ordered to be widened, no such tree growing in the adjoining hedge, though fully as pre-

* Sect. 3d. and 4th.

OBSERVATIONS, &c. 9

prejudicial to the road, is to be cut down or even lopped. This inconsistency the committee propose to remove, and to allow that timber trees may be cut down and lopped, whether they grow in the highways or in the adjoining hedges ; but *not before* they have been viewed by *two justices*. *

THE words of this resolution are very indefinite : but as there must certainly be a reference to the former regulations of the general act, I suppose the words, "*in the country where the road lies,*" can only relate to such trees as grow

* See Report, Resolution 9th.

10 OBSERVATIONS, &c.

grow in the roads or the adjoining hedges.

THE requiring two justices to view every tree in the division before it is cut down, may be intended by way of kindness to them, on the supposition that they have "*fair round bellies with good capon lined,*" and therefore need exercise. However this be, the restriction will defeat the intent of the clause, as it is not possible to be complied with. I would propose, that no tree, &c. should be cut down or lopped without fourteen days notice being first given by the surveyor to the owner or his agent; and that in cases of
non-

OBSERVATIONS, &c. 11

non-agreement, then and not before, one or two justices may be required to view the tree, &c. and finally determine the dispute. Also that two justices on their own view may have power to order, at proper seasons, any trees that grow in the highways or hedges, that they deem prejudicial to the roads, to be fallen or pruned.

It is doubtless a matter of greatest national concern to increase our timber, and guard against any unnecessary diminution of it: but in general such trees as grow in the highways and adjoining fences, are not worth preserving. And so extremely destructive is their shade

to

12 OBSERVATIONS, &c.

to the highways, by excluding the influences of the sun and wind, in a climate moist like ours, that I wish a clause was added by the committee to prevent, by a penalty, any person from planting or suffering to grow any trees in the highways or adjoining hedges.

INDEED of the bad effects of the shade of trees and hedges, &c. the committee seem fully sensible; for they propose that all hedges on the sides of highways shall not only be pruned upright, but also be cut down to a limited height, viz. four feet; * which I think is too high; three feet would be a sufficient fence. As

* See Report, Resolution 9th.

As many disputes have arisen concerning the words "*yearly value*"* in rating the statute work, it is to be wished that the legislature would give their own definition of them in the new intended act. Tenants and occupiers of estates are not at present under any obligation to inform the surveyors of the highways of the rent they pay, or the value of the lands they hold. Some have contended that the common parochial assessments can only determine the value; others, and I think with more reason, suppose, that by the words *yearly value*, the clear annual

* See general Highway Act, Sect. 23.

14 OBSERVATIONS, &c.

nual income of the estate, after the taxes are paid, is intended. As this imposition of statute labour, like all other burdens on the public, is intended and ought to be equal, there can be no other way of *fairly* rating it but by an actual survey and valuation. The great differences that arise from the manner of landlords letting their farms, some to the full value, others greatly below it, and also from the old parochial rates and customary assessments, render it impracticable for a surveyor to know either the actual or proportional value of the estates in his district; how can he then equally rate their labour?

I HAVE known many strong litigations upon this business: and where the farmers and country people (who are ever disposed to evade these personal duties and impositions) have contested it with the surveyors, and refused to give them any knowledge of the rent they paid, or of the annual value of the lands they occupied, if their own, the surveyors, by an over assessment have compelled them to appeal, and thus discover the truth. What a long and troublesome method is this?

As in the description of such inhabitants as rent houses, &c. under three pounds per annum, and

C

are

16 OBSERVATIONS, &c.

are liable to perform statute labour, *apprentices and menial servants* are excepted;* many persons who have wives and families who rent houses and pay taxes, but who are hired servants and for the most part live in their masters families, have claimed the benefit of the exemption granted by this clause to *menial* servants. I think they are *not* entitled to it, under the above circumstances: and as the number of persons in this situation is very considerable in a trading country, I would propose that the public should not thus lose the benefit of their labour or composition. **THOSE**

* See general Highway Act, Sect. 23.

THOSE persons who rent houses, &c. under three pounds a year, being paupers, or under eighteen or above sixty-five years of age;* are exempted from statute work; and it is right that they should have this indulgence. I would carry this still farther, and exempt all *widows* or *unmarried women* renting houses under three pounds per annum from statute work or composition.

To allow the surveyors any discretionary power to remit to persons, not exempted by the act, any part of their statute work or composition, would open a door

C 2

* See general Highway Act, Sect. 23.

18 OBSERVATIONS, &c.

to innumerable frauds and partialities. But, there may be frequent occasions; indeed they often present themselves, when it would be very proper to give some indulgence to the *lowest* class of inhabitants.

It would therefore, I think, be of use, to give power to two justices at their special sessions, upon the application of the surveyor of any township, &c. and good reason given, to allow all the inhabitants of such township, &c. renting *under three pounds* per annum to be rated at *three days only*, although *six* days labour or composition be required from all the *other* inhabitants.

To

To the penalties for the non-performance of statute work,* should be added the charges of conviction, which generally amount to five or six shillings. The offending party is not, as I apprehend, at present obliged to pay these charges; and from this circumstance the surveyors are frequently deterred from informing against defaulters, and great encouragement is given to those obstinate and litigious people who refuse to perform their statute work. The penalty of one shilling and sixpence for a default of *one* days work is too small a sum; it ought

C 3

to

* See general Highway Act, Sect. 24.

20 OBSERVATIONS, &c.

to be *two* shillings. Persons occupying lands, &c. not above fifty pounds a year, are not obliged to find or compound for more than *one* carriage.* Many carriers, whose living is from the good repair of the roads, and whose profit occasions their decay, keep *two* or *more* teams on an estate of fifty pounds a year. It seems not equitable to include *them* in this clause: they should do duty with all their carriages; as the damage they do the roads is greater or less according to the *number* of such carriages.

THE other alterations proposed by the committee in the fixing the statute

* See general Highway Act, Sect. 27.

statute work are very judicious and equitable:* I only object to the *rates* of composition in the 6th resolution; they are too low.

For a cart with one horse should be paid one shilling and nine-pence for each days work; for a cart with two horses, three shillings; and for each horse kept to draw a coach, post chaise, &c. one shilling and six-pence.

To this clause there should be an exception in favour of such innkeepers, &c. who keep post horses to draw in post chaises,

C 4

stage

* See the Report, Resolutions 6, 7, and 8.

22 OBSERVATIONS, &c.

stage coaches, machines, &c. *for hire.* All such horses *above* the number six should be rated at nine-pence each for every days statute work ; and if no more than six are kept, they should be rated at one shilling for each days work.

By the present highway act two assessments of six-pence in the pound may be levied in one year; *one* for buying materials, making satisfaction for damages, &c. and the other for repairing causeways, bridges, &c. where the statute duty shall be insufficient. The committee propose to order only *one* such rate for all the above purposes,

ses, and that this shall not exceed six-pence in the pound in any *one* year.

By the present method of assessing this tax, old rates and valuations are followed, and the real sum raised is little more than one third of what it ought to be: instead of six-pence in the pound, about two-pence is collected. It is surprising that in many places the tithes of the clergy are not included in the assessment for the highways.* They certainly ought to be rated, for the directions of the act are, that an equal rate shall
be

* See general Highway Act, Sect. 21.

24 OBSERVATIONS, &c.

be made, &c. &c. according to the rules of the 43^d. of *Elizabeth*; and in these the tithes of the clergy are expressly mentioned.* However, should they not be added to the word *hereditaments*?

IF it be thought proper to limit the assessments to *one*, in a year, this one ought to be made according to a *real* valuation of the estates, as they are at present; and a clause should be inserted in the act *requiring* this.

INSTANCES have occurred where the greatest part of the inhabitants
of

* See 43^d. Elizabeth, Sect. 1.

of a township, &c. have very wisely been desirous to make vigorous efforts to widen and effectually amend their highways in as short a time as possible. To effect this good design they have been desirous not to wait the expenditure of their annual fixpenny assessments, but to raise perhaps *four* or *five* of these in *one* year; preferring this amicable method of raising money, to the very tedious and expensive mode of levying a fine under an indictment or presentment, by which a considerable part of the money raised is *lost* in law charges, court fees, and poundage. These good purposes have generally been frustrated by
the

the avarice and obstinacy of a *few* individuals who would be glad to enjoy the benefit of good roads, when made at their neighbour's cost, but sheltering themselves behind the words of the act of parliament, refuse to contribute a farthing beyond the fixpenny assessment. In such cases as these, I propose it with diffidence, may it not be very useful to empower the justices at their quarter sessions to allow more than *one* assessment of six-pence in the pound in one year? It may be required, that the major part, being three fourths of the inhabitants of any parish, township, &c. both as to number and value, shall petition the court
of

of quarter sessions for this purpose; that they shall give public warning of such their intention by affixing a notice in writing on the church doors, or other public place in such parish, &c. at least fourteen days before the time of their intended application; and that full and satisfactory proof on oath shall be required by the said justices of the propriety and necessity of such extraordinary assessments. Under these or similar restrictions, I am persuaded such a power given would produce very beneficial effects.

In the highway act there are two clauses respecting presentments by

28 OBSERVATIONS, &c.

by justices, &c. * The first gives them a power to present such highways, bridges, &c. as are out of repair, and ought to be amended by any persons, &c. by reason of tenure, &c. And if, after notice given to the persons as aforesaid, and a time limited by the justices, the roads, &c. are not effectually repaired, the justices may order the prosecution to be carried on at the public expence. The same authority is granted to these magistrates by the next clause respecting all other highways, but with this remarkable variation, which in general must render it

* See general Highway Act, Sect. 14 and 15.

of non-effect, that in order to charge the public with the expences of prosecuting the presentments of common highways by justices at the sessions, a major part of the justices present at the quarter sessions must agree to it; such major part not being less than FIVE.

WHERE (except in Middlesex and some southern counties in the neighbourhood of London) is there a quarter sessions that can commonly produce a number of magistrates sufficient to form such a majority as this? I think the power should be given to the major part of the justices present.

It

30 OBSERVATIONS, &c.

It is doubtless greatly for the public advantage that justices of the peace should have this power of charging the public with the expences of prosecutions carried on for the common good : it is to be wished that it was given to them in many more instances, than this of presenting highways. There is a numerous train of offences against the public peace, which an active disinterested magistrate would wish to punish ; but from the *indifference* and *parsimony* of parishes, &c. which ought to prosecute those who commit them, they either must remain unpunished, and go on glorying in their impunity, or, the magistrate at his *own private*

*vate expence and trouble, must bring them to justice : * this is a very unreasonable alternative, and merits the attention of the legislature.*

It

* *This has been frequently the case when constables and parish officers have neglected their duty, or been obstinately disobedient. A remarkable instance of this kind happened in Lancashire in the year 1770 ; when after a long and expensive train of litigation, two overseers of the poor were tried at Lancaster assizes before a special jury, for disobedience, and found guilty. Sir Harbord Harbord Bart. and Richard Townley Esq. were the two patriotic magistrates, who had spirit and generosity enough to persevere in the prosecution at their own private expence. They had the satisfaction to succeed ; and to their firmness and public spirit in that affair, the whole kingdom is greatly obliged.*

D

32 OBSERVATIONS, &c.

It may be objected, perhaps, that the giving these powers to the justices of the peace at their quarter sessions, may occasion more evils than they are intended to remedy; and that from motives of private convenience or emolument, and from personal pique, the justices may expend the public money to very unworthy purposes. But whilst there subsists a superior jurisdiction to which these magistrates are always amenable, and by which they ought to be, and certainly will be severely punished for every wilful and corrupt act of oppression and injustice, there can be no more cause of apprehension from the investing them with the authority

rity above-mentioned, than from their possessing the various powers with which the legislature hath already intrusted them.

It has been observed, that in the general highway act, half of the forfeitures, not otherwise applied, are to go to the informer, and the other half to the surveyor of the highways, for the use of the roads.* Now a difficulty may here occur; since the surveyor being commonly the informer and the only witness, he cannot give testimony for himself.

In the general turnpike act†

D 2

this

* See general Highway Act, Sect. 47.

† See general Turnpike Act, Sect. 52.

34 OBSERVATIONS, &c.

this circumstance is attended to, and the inconvenience obviated; for when surveyors, toll gatherers, &c. are the informers, the *whole* penalty is ordered to be applied towards the repair of the roads.

THE committee seem very attentive to guard against unnecessary trespass in private grounds for the purpose of getting materials to amend the highways,* and propose to prohibit the doing this without leave obtained of the owner or occupier in writing, or the order of two justices at their special sessions. After the word
owner,

* See Report of the Committee, Resolution 10th.

OBSERVATIONS, &c. 35

owner, I would propose to insert these words, "*or his or their agent or agents.*"

I COME now to observe upon those resolutions of the committee which relate to the breadth of the wheels, and the number of horses to be allowed to waggon, carts, &c.* It seems to be generally allowed that all narrow wheels, i. e. of less breadth than six inches, are greatly destructive to the highways. If so, it must be granted of course, that the greater the weights that are carried on such wheels, the more prejudicial they

* See Report of the Committee, Resolutions

36 OBSERVATIONS, &c.

will be. I believe it will also be agreed upon, as an axiom, that when the power of the horses is not sufficient to draw the weight, (on whatever sort of wheels it is placed, but especially on *three inch wheels*,) *in a direct line*, the roads will be greatly injured by the unequal zigzag motion of the wheels.

It is upon these principles, I apprehend, that the committee have formed their resolutions as to the weights, number of horses, &c. With respect to the breadth of the wheels, they propose great encouragement to the use of such wag-gons as by the variation of their axles, will roll large surfaces.

Many

Many judicious mechanics greatly except against the allowing such vast weights as may be drawn by eight strong horses in waggons, the wheels of which roll sixteen inches on each side by the variation of the axles, or whose fellies shall be sixteen inches wide. There are no materials that can bear the weights that may be, and actually are drawn on such carriages: in the least inequality, even flints are instantly ground to dust.

By one resolution,* the committee propose to take off all restraints as to the number of horses,

D 4

and

* See Report of the Committee, Resolution 3^d 1st.

and weights to be drawn, from waggons with the last mentioned wheels, and to allow them to pass toll free for three years. With diffidence, I oppose my opinion to that of this most respectable committee, but for the reason above assigned, I fear these wheels so encouraged will prove highly destructive to the best constructed roads.

THE common broad wheeled waggons and carts drawn by eight and four horses, and restrained to moderate weights, are the most advantageous, on the long run, not only to the public turnpike roads, but also to the carriers them-

themselves. Whatever objections may arise against the use and encouragement of nine and six inch wheels, and the restraints to be imposed on those destroyers of the roads, *narrow wheels*, from any *local* considerations, as the narrowness and depth of some bad roads in particular counties, &c. are so far from operating *against* the proposed regulations of the committee, that they almost prove their necessity, if it were only to enforce the widening and amendment of such highways. The general state of the highways, and the sense of almost all those who have attended to this subject throughout England, seem to

to prove it highly expedient to put in practice many of the resolutions of this committee, respecting wheel carriages. The variation of the weights allowed to be drawn in summer and winter is very judicious; and the erection of weighing engines, if properly constructed, and faithfully managed, will be of the greatest utility.

It is one great intention of the committee to encourage carts, &c. with *six* inch wheels, as they are not expensive, and are found to be as useful and convenient to the farmers as narrow wheels, and yet are not, like these, ruinous to the roads. They also seem to have a
 very

very laudable design to suppress as much as possible the use of the destructive *three inch* wheels. I think both purposes might be better effected, and with more advantage to the public, if waggons with *three inch* wheels were not allowed to be drawn by more than four horses, and with their loading only to weigh, in summer, two tons ten hundred weight, in winter, two tons; carts with *three inch* wheels to be drawn by two horses only, and with their loading to weigh, in summer, one ton ten hundred; in winter, one ton five hundred. These restrictions, together with the raising the toll one half more on all such narrow wheels,

42 OBSERVATIONS, &c.

wheels; and the taking from them all kinds of exemptions whatever, must soon put an end to them.* If these regulations take place, the *six inch* wheels will then have such a great superiority both from the discouragement offered to the narrow wheels, and the many privileges and exemptions granted to them, that it will be *fully* sufficient to allow waggon with *six inch* wheels to be drawn by no more than five horses, and to weigh with the loading three tons fifteen hundred in summer, and three tons five hundred in winter; carts with *six inch* wheels to be drawn by

* See the Report of the Committee, Resolutions 21 and 22.

by *three* horses only, and with the loading to weigh, in summer, two tons five hundred, and in winter two tons. It is necessary to be very strict in limiting the weights to be drawn on *any* kind of carriages, and thus to guard against the intolerable covetousness of waggoners, &c. who only look at the *present* profit, and by putting on their carriages as much loading as ever their poor horses can drag along, they ruin the roads, and eventually injure themselves by overworking and destroying their horses. Carts with *three inch* wheels, drawn by *one* horse, should on the above principles be limited as to *weight* also: I think that in winter they

44 OBSERVATIONS, &c.

they may be permitted to weigh with their loading fifteen hundred, and in summer one ton.

MR. Richard Whitworth's* proposal of obliging all stage waggoners, carters, &c. to have the axles of their carriages varied by a scale of twelve inches divided into three parts, so that every set of wheels made, should be fixed on axles, differing in length four inches, I think would be extremely useful, and in a great degree answer the end of rolling the roads by means of broader wheels, and likewise prevent their being cut into deep
ruts.

* Member of Parliament for Stafford.

ruts. It has been suggested to me, by a sensible practical mechanic, and one who is employed in superintending highways, that if all carts drawn by *one* horse *were required* to have their axles of a different width, as aforesaid, on all roads, whether turnpike roads or not, it would be a great means of their preservation. In the neighbourhood of large towns, especially where there is a great consumption of coals, the introduction of such carts carrying a limited weight and drawn by one horse, I am persuaded would be of public advantage; and I would propose the granting an abatement of one third of the tolls on all such turnpike roads, in their favour.

A very

46 OBSERVATIONS, &c.

A very judicious and well informed writer on the subject of highways,* proposes, that *the construction of the carriages* should be attended to by the legislature, as well as the breadth of their wheels, "such a construction of them as will *not* enable them to carry heavy, but such an one, as will *oblige* them to carry light loads."

THE same author, amongst many very excellent regulations proposed in his Enquiry, which well deserve the attention of the public,

* The Rev. Mr. Homer; see his "Enquiry into the Means of preserving and improving the public Roads," printed for Payne and Fletcher, 1767. Pages 82, 83.

lic, thinks it requisite to subject waggoners and carters to the controul of the respective commissioners of different turnpike roads; who, he says, can judge of the treatment proper for their respective roads, better than it can be ascertained by any general provision.* In this, I am quite of his opinion; and wish such powers were given to the commissioners, as would restrain the wanton or malicious conduct of waggoners, &c.; and where there are two roads,

(a

* I should have been happy to have made many extracts from Mr. Homer's book, but the nature and size of this little pamphlet would not admit of it.

48 OBSERVATIONS, &c.

(a winter and a summer one) to prevent their indiscriminate use of both.

THE committee, with great propriety, propose the inserting forms of conviction in the general highway act; and, though it is *not* mentioned, I suppose in the general *turnpike* act also.* In all statutes where justices of the peace are empowered to convict offenders, forms of conviction should be drawn up and inserted, as this would prevent many frivolous appeals and expensive litigations in the superior courts.

THE

* See Report of the Committee, Resolution 15th.

THE committee propose that the toll gatherers, who shall be appointed to manage weighing machines, shall have gratuities for their trouble, to be paid out of the forfeitures arising from carriages passing with over weight.* I think it would be very proper to add to this clause, particular directions for the management of these machines, with penalties annexed, for the negligent or wilful misbehaviour of the toll gatherers in suffering carriages with over weights to pass through the gates under their care, without weighing; and, in taking false accounts, &c.: and that every such machine should

E 2

four

* See Report of the Committee, Resolution 18.

four times in the year, at least, be minutely examined by the commissioners, so that it may be always kept in proper order and repair; and that the toll gatherers should be obliged to weigh any waggons, &c. that pass through their gates, at the requisition of *any traveller whatsoever*, although he be not an acting trustee for the road; clerk, treasurer, surveyor, &c. Instead of paying the toll gatherers their gratuities from the *forfeitures*, which would render them incompetent witnesses, I think such an addition to their salary, or, if they farm the tolls, such an allowance should be made them for their care and trouble in weighing waggons,

gons, and managing the engine, as the commissioners shall think proper.

THAT turnpikes, indiscriminately erected, without probability of effectually repairing the roads for the benefit of which they are obtained, are very great nuisances, we have numerous instances to prove. The committee seem fully aware of this, and in their report have proposed some remedies for this growing evil.* But may not there an inconvenience arise from too precipitate an expenditure of the money subscribed, occasioned by the anxiety of the subscribers to

E 3 erect

* See Report, Resolutions 27 and 28.

52 OBSERVATIONS, &c.

erect the turnpikes (*their securities*)
as soon as possible?

IN many parts of this kingdom, especially at the first erection of turnpikes, the people imagine the roads are to be made and kept in repair by the very charm of the word turnpike; and not being obliged to continue their statute work with so much attention as formerly, depend entirely on the tolls, and fall into a state of negligence and indifference, till at length, the first materials are worn out; and then the tolls being mortgaged to the height, the whole burden of renewing and supporting the roads again is laid upon

upon them, with the additional tax of the tolls.

IN turnpike, as in most other public trusts, the commissioners at first attend with much spirit and assiduity; but soon become remiss, and weary of a public employment which is laborious and productive of no private emolument. It were much to be desired that this was not the case: but if it is found to be true that these trusts are neglected, it certainly deserves the attention of the legislature, to guard against an evil, which will totally obstruct every regulation they can devise for the improvement and preservation of the turnpike roads.

54 OBSERVATIONS, &c.

THE obligations that individuals lie under, in many parishes, &c. to repair particular highways and bridges, *ratione tenuræ*, are thought by many judicious observers to be no less injurious to the public in general, than they are unequal and burdensome to the individuals themselves. In the infancy of trade and manufactures, when there was very little communication or travelling between neighbouring towns and villages, roads were made through particular manors and estates, and bridges erected at the expence, and for the convenience of one or more particular families: by their permission their neighbours enjoyed

joyed the benefit of them, and so by degrees they became of public, and general use. At this time, when the particular occasion of their being first made is forgotten, and the roads by immemorial custom are become public highways, the prescriptive obligations to repair them remain upon the possessors of those estates, whose owners for private convenience first made these roads, or bridges. Of common right, the general charge of repairing highways lies on the *occupiers of lands* in a parish, &c. Now, whatever causes have altered this *common right*, which is the only wise and equitable rule of repairing highways, whether immemorial

56 .OBSERVATIONS, &c.

morial usage, inclosures of common fields, mutual agreements, &c. &c. at this day they are unequitable, and the cause of many roads being bad.

It makes no great difference to the public whether one or two estates in a parish or township are to repair by prescription all the highways in the township, &c. or every estate is charged with the amendment of a certain length of them; though the latter is by far the more equitable to the individuals. In either case, the highways are always in miserable order; and it is hardly possible by any processes of indictment, &c.

to

to keep them, even if once made good, in any tolerable uniform repair.

THE general principle of all public impositions, is this, that those who are to derive the greatest advantages from their application, shall bear the greatest share of their burden. This principle, if applied to the subject I now speak of, would direct the abolition of these private obligations and prescriptions; and whilst the community at large enjoys the comfort and advantage of good roads, and safe bridges, transfer the burden and charge of their support from individuals to the public.

It

58 OBSERVATIONS, &c.

It may appear presumptuous in me, to speak of this subject so freely ; law-men may urge the old maxim, *Volenti non fit injuria* ; that all prescriptions suppose an original equivalent ; that purchases and transfers of estates liable to these burdens are daily made, proper allowances being made on their account ; that the alteration I propose would be injurious to particular townships or parishes, &c. I acknowledge that difficulties may attend the execution of this scheme ; but beg leave to suggest the following plan, viz. “ To insert a clause in the general highway act, requiring all those persons, who now by prescription
“ on

“on are obliged to support and a-
 “mend particular highways, bridg-
 “es, &c. within a limited time
 “to make them of a sufficient
 “width, and put them in com-
 “plete order and repair; and that
 “from this period their right of
 “repair, *rationæ tenuræ*, should
 “entirely cease and be abolished,
 “and the townships and parishes
 “at large be charged with their
 “future support and amendment.”

I hope such a scheme as this
 would be chearfully complied with
 by all parties. The individuals
 under the prescriptive burden
 would surely, with thankfulness,
 make *one* noble, generous effort
 to be released from it; and the
 public

60 OBSERVATIONS, &c.

public chearfully take upon themselves the proportionate expence of the *future* repair of those roads, through which they have travelled with difficulty and danger, and which they had little or no expectation ever to see amended.

I AM sorry to observe that the committee have not proposed the repeal of the present highway and turnpike acts. To compleat their laudable design, I could wish the amendments proposed in their report were added to the particular clauses of the present acts to which they refer, and that the other parts of those clauses, which are contradictory to them, were
struck

OBSERVATIONS, &c. 61

struck out; so that we might have, as before, only *one* act on each subject; containing in a clear and comprehensive view, the whole wisdom of the legislature on those important articles of our national police, the *public highways* and *turnpike roads*.

THE END.

61
OBSERVATIONS, &c.

think that; so that we might have
as before; only one act on each
subject; containing in a clear and
comprehensive view the whole
willdom of the legislation on those
important articles of our national
policy: the public highway and
municipal roads.



